



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 7, 1998

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
2014 Main Street, Room 501
Dallas, Texas 75201

OR98-1150

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114933.

The Dallas Police Department (the "department") received several open records requests for various records, including tape recordings of police dispatch and 911 telephone calls, pertaining to a fatal automobile accident involving one of the department's police officers. You contend that, except for the accident report, the information pertaining to the accident is excepted from required public disclosure pursuant to sections 552.103 and 552.108(a)(1) of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if release of the information would interfere with the detection, investigation, or prosecution of crime[.]" In your original brief to this office, you informed us that the records at issue pertained to a pending criminal investigation and that the release of the requested information at this time could interfere with law enforcement or prosecution. This office has subsequently learned that the Dallas County Grand Jury has "no billed" the police officer involved in the accident. We therefore conclude that section 552.108(a)(1) is not applicable to the requested information.

To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. You have informed us that the family of the decedent has filed a lawsuit against the City of Dallas in connection with the accident. We therefore conclude that you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103. The requested records may therefore be withheld, except for the "front page

offense report information," which may not be withheld from the public pursuant to section 552.103. Open Records Decision No. 597 (1991); *see also Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103. We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

One requestor also seeks a copy of the police officer's personnel file. You seek to withhold portions of the personnel file pursuant to section 552.117 of the Government Code. Section 552.117(2) protects the home address, telephone number, social security number, and information regarding family members of "a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code." Unlike non-peace officer public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988). We agree that the department must withhold pursuant to section 552.117(2) the information you have highlighted in the personnel documents you submitted to this office. Because you have raised no other exception for the remaining personnel information, the department must release the remaining information in the officer's personnel file.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large loop at the beginning.

Sam Haddad
Assistant Attorney General
Open Records Division

Ref.: ID# 114933

Enclosures: Submitted documents

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